

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6964**

**BILL NUMBER:** SB 390

**NOTE PREPARED:** Jan 5, 2009

**BILL AMENDED:**

**SUBJECT:** Bail.

**FIRST AUTHOR:** Sen. Rogers

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**    **GENERAL**  
                          **X DEDICATED**  
                          **FEDERAL**

**IMPACT:** State and Local

**Summary of Legislation:** This bill has the following provisions:

- A.    *Deadline for Bail* – It provides that an undertaking for bail expires 36 months after the undertaking is posted for the release of a defendant from custody if: (1) the defendant fails to appear as required; and (2) the court fails to make an adjudication concerning the defendant, including refusing to extradite the defendant; during the 36-month period.
- B.    *Electronic Mail Addresses* – It requires sureties and bail agents to establish and maintain electronic mail addresses after August 1, 2009. It provides that if a defendant does not appear as provided in a bond and the court orders the bail agent and the surety to surrender the defendant to the court, the clerk may send notice of the order by electronic mail to the bail agent and surety.
- C.    *Failure to Appear* – It reduces the amount of time a surety and bail agent have to produce the defendant or provide a valid reason for the defendant's failure to appear. It reduces the time used to assess late surrender fees against a surety and bail agent.
- D.    *Late Surrender Fees* – It provides that the court retains late surrender fees instead of the fees being deposited in police pension trust funds and county extradition funds. It specifies that the retained fees must be used by a court to defray the costs of operating the court, including the costs of extraditing criminal defendants and operating diversion programs.
- E.    It repeals the law establishing county extradition funds.

**Effective Date:** July 1, 2009.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** This bill could result in a possible increase in forfeiture revenue to the

Common School Fund. Under current law, a bail agent forfeits 20% of the face value of the bond if the agent cannot make the defendant appear within 365 days after notice is sent from the court to the agent. As proposed, a bail agent would forfeit 20% of the face value of the bond if the defendant does not appear within 180 days. All forfeitures are deposited in the Common School Fund. The number of bond forfeitures is not reported.

### **Explanation of Local Expenditures:**

**Explanation of Local Revenues:** Persons who are charged with a crime and await trial have a constitutional right to be released if they will not be a threat to public safety. Bail bond agents assume the risk of ensuring that the defendant appears for trial for a fee charged to the defendant. Indiana law includes conditions for bail bond agents to produce a defendant for court appearances when the court notifies the agent.

Under current law, the amount of the Late Surrender Fee depends on how many days it takes for the bail bond agent to produce the defendant after the agent receives notice from the court for the defendant to appear. The agent must produce the defendant within 120 days to avoid paying this fee. As proposed, bail bond agents would be required to produce a defendant within a shorter period of time to avoid paying a fee. As proposed, Late Surrender Fee revenue could increase by reducing the amount of time that a bail agent has to produce a criminal defendant for trial.

Changes in Late Surrender Fees		
Number of Days Before Bail Bond Agent Is Able to Produce Defendant After Notice by the Court		Late Surrender Fee as Percentage of Face Value of Bond
<u>Current Law</u>	<u>Proposed</u>	
Between 120 and 180 days	Between 60 and 90 days	20%
Between 181 and 210 days	Between 91 and 120 days	30%
Between 211 and 240 days	Between 121 and 180 days	50%
Between 241 and 365 days	Over 180 days	80%

Revenue from the Late Surrender Fee is currently deposited into the Police Pension Trust Fund and the County Extradition Fund. As proposed, the revenue would be redirected to the court that issued the bond to defray the costs of operating the court, including the costs of extraditing criminal defendants and operating diversion programs. Funds remaining in a county extradition fund on June 30, 2009, is to be transferred to the county's general fund.

According to the *Indiana Judicial Report*, in CY 2007, courts in 40 counties reported collecting \$1.05 M from the Late Surrender Fee.

The Department of Insurance reports that 381 bail bond agents were registered in 2008.

**State Agencies Affected:** Department of Insurance.

**Local Agencies Affected:** Courts with criminal jurisdiction.

**Information Sources:** 2007 *Indiana Judicial Reports*.

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